

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

MM Docket No. 92-213

SEP 22 2 32 PM '92

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8060
Table of Allotments,
FM Broadcast Stations.
(Canton and Louisiana,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 24, 1992; Released: September 22, 1992

Comment Date: November 13, 1992

Reply Comment Date: November 30, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Foxfire Communications, Inc. ("petitioner"), proposing the substitution of Channel 271C3 for Channel 271A at Louisiana, Missouri. Petitioner also requests modification of its license for Station KJFM(FM), Channel 271A, to specify operation on Channel 271C3. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Louisiana with a wide coverage area FM service. Petitioner notes that Channel 271C3 can be allotted to Louisiana in compliance with the Commission's Rules provided Channel 265C3 is substituted for Channel 272C3 at Canton, Missouri.¹ Station KBXB, Canton, holds the construction permit for Channel 272C3. Since Bick Broadcasting, the permittee for Channel 272C3, Canton, consented to the substitution of channels, there is no need to issue an order to show cause.² Channel 265C3 can be allotted to Canton, Missouri, in compliance with Section 73.207(b) of the Commission's Rules at the existing site for Station KBXB.³ Channel 265C3, Canton, is short-spaced to Station KPCR-FM, 265A, Bowling Green, Missouri, and Station WAHI, Channel 266A, Augusta, Illinois. However, Station KPCR-FM, Bowling Green, has been ordered to Channel 231C3 and Station WAHI, Augusta, has been modified to Channel 253A.⁴ Therefore, grant of a license for Station KBXB,

Canton, may be withheld until Station KPCR-FM is licensed on Channel 231C3 and Station WAHI is licensed on Channel 253A.

3. We shall propose to modify the license for Station KJFM(FM, Louisiana, Missouri, to specify operation on Channel 271C3, as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest for the channel at Louisiana.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 271C3 to Louisiana, Missouri, since it would provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below:

	Channel No.
City	Present Proposed
Canton, Missouri	272C3 265C3
Louisiana, Missouri	271A 272C3

5. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

Pike County Broadcasting Station KPCR-FM P.O. Box 1 Bowling Green, Missouri 63334	Good News Broadcasters, Inc. Station WAHI Rt. 1, Box 72 Plymouth, Illinois 62367
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Bick Broadcasting Company
Station KBXB
119 North Third Street
P.O. Box 711
Hannibal, Missouri 63401

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **November 13, 1992**, and reply comments on or before **November 30, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Thom T. Sanders, President
Foxfire Communications, Inc.
P.O. Box 438
Louisiana, Missouri 63353

¹ The coordinates for Channel 272C3 at Louisiana are 39-21-57 and 91-16-30.

² Petitioner provided a letter from James E. Janes, President, Bick Broadcasting, consenting to the substitution of Channel 265C3 for Channel 272C3.

³ The coordinates for Channel 265C3 at Canton are 40-07-33

and 91-31-42.

⁴ Station KPCR-FM, Bowling Green, was modified to specify operation on Channel 231C3 in MM Docket No. 90-131 (5 FCC Rcd 6543 (1990)) and Station WAHI, Augusta, Illinois, was modified to specify operation on Channel 253A in MM Docket No. 90-510 (7 FCC Rcd 2099 (1992)).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.